IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Khetsidas through his Legal Representatives vs. The State of Raj. & anr.

S.B. Civil Second Appeal No.23/83 against the judgment and decree dated 6.11.1982 passed by the Addl. District Judge, Bhilwara in Civil Appeal No.19/79(17/79).

Date of Judgment: May 23, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Ms.Rekha Borana for the appellant.

BY THE COURT:

Heard learned counsel for the appellant.

The appellant is aggrieved against the denial of part of relief by the trial court by its judgment and decree dated 8.2.1979 in a suit for injunction and for refund of the amount. The appeal too was dismissed by the first appellate court vide judgment and decree dated 6.11.1982.

Brief facts of the case are that the plaintiff applied for obtaining mining lease for sand-stones for two plots, measuring 200 ft. x 200 ft. having number A-57 and B-65 on the basis of rent-cum-royalty under the provisions of Rajasthan Mines and Mineral Concession Rules, 1959 (for short 'the Rules of 1959'). The State Government sanctioned the lease in

favour of plaintiff-appellant for the said two mines on condition that the dead rent shall be charged at the highest rate prescribed under the Rules. At that time the highest prescribed rate for dead rent was Rs.200/- for mine measuring 200ft. X 200 ft. for one year. On 16.2.1968, the said dead rent was increased to Rs.1920/- for plot of size of 200 ft. x 200 ft. The order allowing the mines passed by the State Government on 25.11.1967, got the approval of the competent authority only on 14.8.1968, i.e. after coming into force of the amended provisions charging the enhanced dead rent. The lease deeds for the said two mines were executed on 31.8.1968 and 27.9.1968. In the lease deeds, copy of which are available on record as Ex.A.1 and Ex.A.2, there is a mention that the plaintiff has deposited the dead rent as enhanced by the State Government amounting to Rs.1920/- for each mine. The said amounts were deposited by the plaintiff on 31.8.1968 and 27.9.1968. Since the plaintiff deposited the requisite amounts for one year in advance and he was supposed to deposit the amount of the said dead rent for next year, a demand was raised by the mining engineer against the appellant-plaintiff, upon which the plaintiff-appellant submitted representation to the State Government, upon which according to the appellant-plaintiff, the State Government ordered to maintain the status quo. Because of said dispute, it appears that the plaintiff's leases were not renewed and according to the plaintiff, he stopped mining

operation in the said mines but still the respondent-defendants threatened to recover the lease amount from the plaintiff for the period of one year of which according to the plaintiff, he has already paid the more dead rent calculated on the basis of Rs.200/- per mine per year, as per the rules which were in force when the mines were allotted to the plaintiff by order dated 25.11.1967. The plaintiff also apprehended that the respondent may demand the amount of future lease and dead rent, therefore, the plaintiff served notice under Section 80 C.P.C. upon the State Government on 14.9.1973, which was received by the defendant on 17.9.1973. In backdrop of these facts, the plaintiff filed the present suit on 19.12.1973 with a prayer that the defendants be restrained from demanding any amount from the plaintiff for the period of subsequent year upto which leases continued because of the reason that the plaintiff already paid excess amount and was entitled to even recover some amount from the defendants after adjusting amount for the subsequent year. The plaintiff also sought relief that the respondents be restrained from demanding any dead rent from the plaintiff of the period after expiry of the leases of two years for the said mines. The plaintiff claimed refund of Rs.3040/- along with interest.

The defendant-respondents submitted written statement and admitted grant of rent-cum-royalty in favour of the plaintiff and the execution of the lease deeds dated 27.9.1968 and 31.8.1968 as well as

receipt at the rate of Rs.1920/- for one year for one mine. It is also submitted that the plaintiff himself applied for allotment of the mine @ Rs. 1920/- annually and executed lease deeds containing the same terms and, therefore, the plaintiff is bound by his own admission in contract. It is also stated that the said amount was never deposited under protest, therefore, the plaintiff is not entitled for refund of any amount.

Issues were framed and the trial court decreed the suit of the plaintiff partly and restrained the defendant-respondents from recovering any amount in excess of Rs.1920/- per plot per year.

The judgment of the trial court dated 8.2.1979 was challenged by the plaintiff-appellant and the first appellate court dismissed the appeal vide judgment and decree dated 6.11.1982. The first appellate court also took note of the fact that the dead rent was revised by the order of the Government dated 16.2.1968 and, therefore, also the Government was entitled to demand said amount from the plaintiff.

Being aggrieved by the judgment and decree passed by the courts below, this second appeal has been preferred by the plaintiff.

Following substantial question of law was framed by this Court on 16.2.1983 while admitting the appeal:-

> *"(1) Whether in the facts and circumstances of the case, the learned Addl. District Judge was not right in holding that the Government could charge the dead rent at the rate higher than the maximum prescribed under*

rule 30 of the Rajasthan Minor Mineral Concession Rules, 1959?"

The learned counsel for the appellant vehemently submitted that the defendant-respondents had no authority to recover any amount in excess than as provided under the Rules. It is also submitted that it is not in dispute that on 25.11.1967, when the allotment order was passed by the State Government in favour of the plaintiff for allotment of two mines, the maximum dead rent leviable against the said lease was Rs.200/- per plot per year only. The first appellate court committed error of law in relying upon subsequent amendment dated 16.2.1968 for the reason that the rules cannot be amended by the State by issuing mere notification and, therefore, that amendment cannot be given effect to and secondly, in the notification of the State Government itself, both the mines of the plaintiff were excluded from amendment of the rules and for that the learned counsel for the appellant has shown copy of the notification dated 16.2.1968. It is also submitted that the trial court granted decree for injunction against the respondents-defendants, so far as recovery of the amount beyond the period of two years.

I considered the submissions of the learned counsel for the appellant and perused the record.

It is clear that the order allowing the mine was passed by the State Government on 25.11.1967. The approval of the competent

authority-the State Government, was issued in favour of the plaintiff only on 14.8.1968 and before that a notification was issued by the State Government on 16.2.1968 enhancing the dead rent for the mines. After amendment the lease deeds were executed between plaintiff and the defendants on 31.8.1968 and 27.9.1968 and the plaintiff voluntarily deposited the enhanced amount of dead rent i.e. Rs.1920/- for each mine. In view of the above, the plaintiff was estopped from challenging the demand of Rs.1920/- because of not only the reason that he entered into agreement with the State Government to pay Rs.1920/- for each mine, but it was in consonance with the State Government's order dated 16.2.1968 enhancing the dead rent to Rs.1920/-. So far as the effect of the order dated 16.2.1968 is concerned, no relief has been sought by the plaintiff in the suit of declaring it to be illegal or not binding because of any reason including because of the reason that by that mode, the rules could not have been superseded or amended by the State Government.

The learned counsel for the appellant also submitted that though the State Government issued the order on 16.2.1968 but in fact the order of the State Government was also published in the Gazette only on 5.12.1968 and not only this but subsequent to it, rules were amended by the State Government only w.e.f. 19.5.1970. Be it as it may be, these facts were not before the two courts below nor materials were placed before the two courts below and that was not a case set up by the

plaintiff in his plaint.

It appears from the facts of the case that the two courts below failed to notice that the contract was concluded by execution of the lease deeds on 31.8.68 and 27.9.1968 when he deposited the alleged excess amount with the respondent-defendant. The suit, therefore, could have been filed for refund of the amount upto 31.8.1971 and 27.9.1971. The plaintiff at the more could have claimed benefit of two months' time of notice period for the notice under Section 80,C.P.C., even then the suit could have been filed upto 31.10.1971 and 27.11.1971, whereas the suit has been filed on 19.12.1973. As per Section 3 of the Indian Limitation Act, if a suit is barred by time and even if there is no defence taken by the defendant, the court is under obligation to dismiss the suit and in this case so far as refund of the amount claimed by the plaintiff is concerned.

So far as relief of injunction about recovery of the amount from the plaintiff of the period of subsequent year is concerned, that could have been filed only after a demand was raised against the plaintiff and also could have been filed after expiry of one year from the execution of the lease deeds. Since the State itself stayed its hands from recovering of the amount, therefore, the plaintiff was entitled to take benefit of that period for which there was no apprehension of recovery of the amount from the plaintiff and the plaintiff would have waited for the

decision of the State Government under belief that the State shall not recover the amount from the plaintiff. Therefore, the suit for injunction comes within limitation but in view of the finding recorded above, no case has been made out by the plaintiff for seeking injunction against the defendants for restraining them from recovering the amount of subsequent year of leases. It is not a case where the State has demanded the higher rate than the maximum prescribed rate of dead rent under rule 30 of the Rules of 1959 because of the reason that the State Government issued order on 16.2.1968 enhancing the rate of dead rent and thereafter the plaintiff voluntarily entered into an agreement of lease and took benefit of that contract, therefore, he cannot be allowed to dis-own the part of the document on the ground that the State Government decision to charge more dead rent by issuing notification is without jurisdiction when such was not the case of the plaintiff anywhere before the two courts below.

The more emphasis of the appellant was that by the order dated 16.2.1968 by which the dead rent was increased, appellant's mines were excluded from application of enhanced dead rent. After going through the contents of the said order dated 16.2.1968, this Court is of the view that the said argument has been advanced by misreading of the order dated 16.2.1968. By order dated 16.2.1968, the plaintiff's mines were excluded only for the purpose of making them available for allotment to

other persons and have not been exempted from application of enhancement of the dead rent.

Therefore, I do not find any merit in this appeal and hence the appeal of the appellant is dismissed.

(**PRAKASH TATIA),J.**

mlt.